

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

MITCHELL COSBY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:07-cv-00095-RBP-RRR
)	
WILLIE MYLES,)	
)	
Defendant.)	

MEMORANDUM OF OPINION

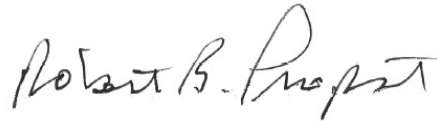
The magistrate judge filed a Report and Recommendation on September 11, 2008, recommending that Defendant Myles' motion for summary judgment be granted as to the plaintiff's Eighth Amendment excessive force claims against him in his official capacity for monetary relief. It was further recommended that Defendant Myles' motion for summary judgment be denied as to the plaintiff's Eighth Amendment excessive force claims against him in his individual capacity. The parties were allowed fifteen (15) days in which to file written objections to the magistrate judge's recommendation. No objections have been filed by any party.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the Report and Recommendation, the Court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and the magistrate judge's recommendation is ACCEPTED. The Court EXPRESSLY FINDS that there are no genuine issues of material fact with regard to the plaintiff's Eighth Amendment excessive force claims against Defendant Myles in his official capacity for monetary relief and that those claims are due to be dismissed as a matter of law. Defendant Myles' motion for summary judgment is therefore due to be GRANTED IN PART and DENIED IN PART as follows: The motion

is due to be GRANTED as to the plaintiff's Eighth Amendment excessive force claims against Defendant Myles in his official capacity for monetary relief. The motion is DENIED as to the plaintiff's Eighth Amendment excessive force claims against Defendant Myles in his individual capacity.

An appropriate order will be entered.

DONE this 7th day of October, 2008.

A handwritten signature in black ink, reading "Robert B. Propst". The signature is written in a cursive, flowing style with a large initial 'R'.

ROBERT B. PROPST
UNITED STATES DISTRICT JUDGE